

7-15-2016

# State v. Spokas Appellant's Reply Brief Dckt. 43933

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43933
	)	
v.	)	ADA COUNTY NO. CR 2015-9992
	)	
ERIC SCOTT SPOKAS,	)	APPELLANT'S
	)	REPLY BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

In his opening brief, Eric Scott Spokas argued the district court abused its discretion when it imposed upon him a suspended sentence of four years, with two years fixed, after he pled guilty to aggravated assault. In its brief, the State argues the district court considered all of the relevant information at sentencing and imposed a reasonable sentence. The State exaggerates and overstates Mr. Spokas' criminal history and does not accurately describe the offense for which he was convicted. In addition, and contrary to the State's argument on appeal, it appears the district court sentenced Mr. Spokas to a longer term of incarceration because he pled guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). The district court abused its discretion

at sentencing and this Court should either reduce Mr. Spokas' sentence or remand this case to the district court for a new sentencing hearing.

### Statement of Facts and Course of Proceedings

Mr. Spokas included a statement of facts and course of proceedings in his opening brief. (App. Br., pp.1-2.) He includes this section here only to respond to the State's arguments on appeal.

The State asserts that Mr. Spokas "has a lengthy criminal history" including, *inter alia*, two convictions for carrying a concealed weapon and convictions for "DC-Offensive Risk of Harm." (Resp. Br., p.3.) This is not accurate. As reflected in the Presentence Investigation Report ("PSI"), Mr. Spokas was charged with carrying a concealed weapon in Ohio in July 1992, and again in Ohio in December 1993. (PSI, pp.5-6.) He was also charged in July 1992 with "DC-Offensive Risk of Harm," which presumably means disorderly conduct, though it is not clear from the PSI. (PSI, p.5.) Mr. Spokas was not convicted of these crimes, and the presentence investigator concluded only that "Mr. Spokas appears to have criminal history entries in . . . Ohio . . . ." (PSI, pp.5-6, 10.) What is most notable about Mr. Spokas' criminal history is the fact that this was his first felony conviction, and his first conviction for a crime of violence. (PSI, pp.5-10.)

The State describes Mr. Spokas' offense, citing to the presentence investigator's discussion of the police reports, which recount the victim's version of the events. (Resp. Br., pp.3-4; PSI, p.3.) It is notable, however, that Mr. Spokas acknowledged arguing with the victim, but denied placing his hands around her neck or even touching her. (PSI, pp.3-4, 5; Tr., p.16, Ls.2-9.) At the change of plea hearing, Mr. Spokas said he and the victim "were arguing that day." (Tr., p.15, Ls.2-3.) He said, "I remember being

very angry, and I loomed over her, pointed at her, screamed at her. I probably made more than one threatening gesture. And I'm sure she was very, very frightened." (Tr., p.15, Ls.3-7.) The victim stated at the change of plea hearing that she was not afraid of Mr. Spokas and would "like us to be able to see each other and communicate so we can try and move on from here." (Tr., p.19, Ls.10-16.)

### ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Spokas a suspended sentence of four years, with two years fixed, in light of the mitigating factors that exist in this case?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed Upon Mr. Spokas A Suspended Sentence Of Four Years, With Two Years Fixed, In Light Of The Mitigating Factors That Exist In This Case

Mr. Spokas asserts that, given any view of the facts, his suspended sentence of four years, with two years fixed, is excessive. This sentence was not reasonable given the nature of the offense, Mr. Spokas's character, and the protection of the public interest. Mr. Spokas admitted to making threatening gestures towards his girlfriend during the course of an argument. (Tr., p.15, Ls.3-7.) This was his first felony conviction and first conviction for a crime of violence. (PSI, pp.5-10.) Counsel for Mr. Spokas requested a suspended sentence of five years, with one year fixed, which would have been an appropriate sentence considering the mitigating factors that exist in this case. (Tr., p.33, L.23 – p.34, L.1.) It appears that the district court sentenced Mr. Spokas to a longer fixed term of incarceration because of his *Alford* plea, and his refusal to accept responsibility for acts he did not commit. The district court said it had

“difficulty . . . in sentencing in a case like this” because Mr. Spokas said he “didn’t do it.” (Tr., p.36, Ls.14-17.) Mr. Spokas admitted to making threatening gestures, which the district court deemed to constitute aggravated assault. (Tr., p.16, Ls.10-13.) For the offense of aggravated assault, the district court abused its discretion in imposing upon Mr. Spokas a suspended term of four years, with two years fixed.

### CONCLUSION

For the reasons stated above as well as those set forth in his opening brief, Mr. Spokas respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that this Court remand this case to the district court for a new sentencing hearing.

DATED this 15<sup>th</sup> day of July, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15<sup>th</sup> day of July, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

ERIC SCOTT SPOKAS  
ADA COUNTY JAIL  
7200 BARRISTER  
BOISE ID 83704

PATRICK H OWEN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

MICHAEL W LOJEK  
ADA COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

AWR/eas